

§ 779.266 Methods of computing annual volume of sales or business.

(a) No computations of annual gross dollar volume are necessary to determine coverage or exemption in those enterprises in which the gross receipts regularly derived each year from the business are known by the employers to be substantially in excess or substantially under the minimum dollar volume specified in the applicable provision of the Act. Also, where the enterprise or establishment, during the portion of its current income tax year up to the end of the current payroll period, has already had a gross volume of sales or business in excess of the dollar amount specified in the statute, it is plain that its annual dollar volume currently is in excess of the statutory amount, and that the Act applies accordingly. The computation described in paragraph (b) of this section, therefore need not be made. Nor is it required where the enterprise or establishment has not yet in such current year exceeded the statutory amount in its gross volume of sales or business, if it has had, in the most recently ended year used by it for income tax purposes, a gross volume of sales made and business done in excess of the amount specified in the Act. In such event, the enterprise or establishment will be deemed to have an annual gross volume in excess of the statutory amount unless the employer establishes, through use of the method set forth in paragraph (b) of this section, an annual gross volume of sales made or business done which is less than the amount specified in the Act. The method described in paragraph (b) of this section shall be used, as intended by the Congress (see S. Rept. 145, 87th Cong. first session, p. 38), for computation of annual dollar volume in all cases when such a computation becomes necessary in order to determine the applicability of provisions of the Act.

(b) In order to determine, when there may be doubt, whether an enterprise or establishment has an annual gross volume of sales made or business done in excess of the amount specified in the statute, and analysis will be made at the beginning of each quarter-year so that the employer will know whether or not the dollar volume tests have

been met for the purpose of complying with the law in the workweeks ending in the current quarter-year. The total of the gross receipts from all its sales or business during a 12-month period which immediately precedes the quarter-year being tested will be the basis for analysis. When it is necessary to make a determination for enterprises or establishments which are operated on a calendar year basis for income tax or sales or other accounting purposes the quarter-year periods tested will coincide with the calendar quarters (January 1–March 31; April 1–June 30; July 1–September 30; October 1–December 31). On the other hand, where enterprises or establishments are operated on a fiscal year basis, which consists of an annual period different from the calendar year, the four quarters of the fiscal period will be used in lieu of calendar quarters in computing the annual volume. Once either basis has been adopted it must be used in making subsequent calculations. The sales records maintained as a result of the accounting procedures used for tax or other business purposes may be utilized in computing the annual dollar volume provided the same accounting procedure is used consistently and that such procedure accurately reflects the annual volume of sales or business.

§ 779.267 Fluctuations in annual gross volume affecting enterprise coverage and establishment exemptions.

It is possible that the analysis performed at the beginning of each quarter to determine the applicability of the monetary provisions of the Act may reveal changes in the annual gross volume or other determinative factors which result in the enterprise or establishment meeting or ceasing to meet one or more of the tests for enterprise coverage or establishment exemption. Thus, enterprise coverage may result where the annual volume increases from an amount under to an amount over \$250,000. Also, an enterprise having an annual gross volume of more than \$1 million and meeting the requirements for a covered retail enterprise under the prior Act on the basis of previous sales analyses may fall below \$1 million when the annual gross

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volume is computed at the beginning of the quarter being tested and as a result qualify only as a newly covered enterprise for the current quarter under the amended Act. Similarly, an enterprise previously subject to new coverage pay standards, having an annual gross volume of more than \$250,000 but less than \$1 million on the basis of previous sales analyses, may increase its annual gross volume to \$1 million or more when re-computed at the beginning of the quarter being tested. It will thus become for the current quarter an enterprise in which employees are subject to the pay standards for employment covered under the Act prior to the amendments, provided that it meets the other conditions as discussed in § 779.245.

§ 779.268 Grace period of 1 month for computation.

Where it is not practicable to compute the annual gross volume of sales or business under paragraph (b) of § 779.266 in time to determine obligations under the Act for the current quarter, an enterprise or establishment may use a 1-month grace period. If this 1-month grace period is used, the computations made under this section will determine its obligations under the Act for the 3-month period commencing 1 month after the end of the preceding calendar or fiscal quarter. Once adopted the same basis must be used for each successive 3-month period.

§ 779.269 Computations for a new business.

When a new business is commenced the employer will necessarily be unable for a time to determine its annual dollar volume on the basis of a full 12-month period as described above. In many cases it is readily apparent that the enterprise or establishment will or will not have the requisite annual dollar volume specified in the Act. For example, where the new business consists of a large department store, or a supermarket, it may be clear from the outset that the business will meet the annual dollar volume tests so as to be subject to the requirements of the Act. In other cases, where doubt exists, the gross receipts of the new business during the first quarter year in which it has been in operation will be taken as

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representative of its annual dollar volume, in applying the annual volume tests of sections 3(s) and 13(a)(2), for purposes of determining its obligations under the Act in workweeks falling in the following quarter year period. Similarly, for purposes of determining its obligations under the Act in workweeks falling within ensuing quarter year periods, the gross receipts of the new business for the completed quarter year periods will be taken as representative of its annual dollar volume in applying the annual volume tests of the Act. After the new business has been in operation for a full calendar or fiscal year, the analysis can be made by the method described in paragraph (b) of § 779.266 with use of the grace period described in § 779.268, if necessary.

Subpart D—Exemptions for Certain Retail or Service Establishments

GENERAL PRINCIPLES

§ 779.300 Purpose of subpart.

Subpart C of this part has discussed the various criteria for determining coverage under the Act of employers and employees in enterprises and establishments that make retail sales of goods and services. This subpart deals primarily with the exemptions from the Act's minimum wage and overtime provisions found in section 13(a) (2), (4), (11), and 13(b)(18) for employees of retail or service establishments. Also discussed are some exemptions for special categories of establishments engaged in retailing goods or services, which do not require for exemption that the particular establishment be a retail or service establishment as defined in the Act. If all the requirements set forth in any of these exemptions are met, to the extent provided therein the employer is relieved from complying with the minimum wage and/or overtime provisions of the Act even though his employees are engaged in interstate or foreign commerce or in the production of goods for such commerce or employed in covered enterprises.

§ 779.301 Statutory provisions.

(a) Section 13(a) (2), (4), (11), and section 13(b)(18) of the Act, as amended, grant exemption from the minimum